

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSHUA GODFREY,
Petitioner,

v.

UNKNOWNNE,
Respondent.

Case No. 20-03617 BLF (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Petitioner, a California state prisoner, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254.¹ Dkt. No. 1. The matter was dismissed for Petitioner's failure to file a complete *in forma pauperis* ("IFP") application or pay the \$5.00 filing fee in the time provided. Dkt. Nos. 7, 8. The Court granted Petitioner's motion to reopen the matter on September 22, 2020. Dkt. No. 12. Petitioner's IFP motion was later denied, and he was instructed to pay the filing fee which he did on November 20, 2020. Dkt. Nos. 18, 19.

DISCUSSION

I. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person

¹ This matter was reassigned to this Court on August 8, 2020. Dkt. No. 5.

1 in custody pursuant to the judgment of a State court only on the ground that he is in
2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
3 § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
5 why the writ should not be granted, unless it appears from the application that the applicant
6 or person detained is not entitled thereto.” *Id.* § 2243.

7 **II. Petitioner’s Claims**

8 Petitioner used an outdated form to prepare his petition, and much of his
9 handwriting is illegible. The little that is legible indicates that Petitioner was convicted in
10 San Mateo County Superior Court and sentenced on or about March 2, 2010. Dkt. No. 1 at
11 1. He also indicates that he appealed his claims through the state courts and has attached
12 copies of the state courts decisions to the form. *Id.* at 2, 7-10. However, the rest of his
13 handwriting is difficult to read. *Id.* at 4-5. The state superior court’s decision denying the
14 petition indicates that Petitioner claimed ineffective assistance of counsel concerning a
15 petition for a writ of coram nobis. *Id.* at 9. The state court also stated that Petitioner had
16 raised claims that were previously considered and rejected, and therefore was a successive
17 petition. *Id.* The state appellate and high courts summarily denied the petitions. *Id.* at 7-8.

18 In the interest of justice, Petitioner will be granted leave to file an amended petition
19 that is legibly handwritten or typewritten. Petitioner is also advised that the Court is aware
20 that he filed a previous federal petition in which he challenged the denial of resentencing
21 under state law. *See Godfrey v. Warden PBSP*, Case No. 20-01381 BLF (PR). That
22 petition was dismissed for lack of federal habeas petition. *Id.*, Dkt. No. 19. Therefore,
23 Petitioner is advised that the instant action may be subject to dismissal as second or
24 successive under 28 U.S.C. § 2244(b)(1). A federal habeas petition is “second or
25 successive” within the meaning of § 2244 “if the facts underlying the claim occurred by
26 the time of the initial petition, [] and if the petition challenges the same state court
27
28

judgment as the initial petition.” *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (citing *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007), and *Magwood v. Patterson*, 561 U.S. 320, 333 (2010)). A claim presented in a second or successive petition under 28 U.S.C. § 2254 that was not presented in a prior petition must be dismissed unless it satisfies one of two statutory exceptions in section 2244(b)(2). Before a second or successive petition may be filed in the district court, the petitioner must first obtain an order from the court of appeals authorizing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

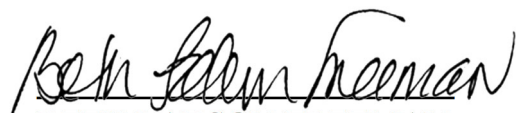
For the foregoing reasons, the petition is DISMISSED with leave to file an amended petition using the court’s form petition. The amended petition must include the caption and civil case number used in this order, No. C 20-03617 BLF (PR), and must include the words AMENDED PETITION on the first page. The amended petition shall be filed **no later than twenty-eight (28) days** from the date this order is filed.

Failure to file a timely response in accordance with this order will result in the dismissal of this action without prejudice and without further notice to Petitioner.

The Clerk shall include two copies of the court’s form petition with a copy of this order to Petitioner.

IT IS SO ORDERED.

Dated: May 5, 2021


BETH LABSON FREEMAN
United States District Judge